

# **DEVELOPMENT AGREEMENT**

## **May 5, 2012**

This Agreement dated as of May 5, 2012, is entered into by and between the Town of Wenham, acting by and through its Board of Selectmen ("Wenham") and James X. Mullen with an address of P. O. Box 2219, South Hamilton, MA 01982 ("Mullen").

### **RECITALS**

Mullen has asked Wenham to consider amending the Wenham Zoning By-law ("Zoning By-law") by adopting Article 17, "Independent Living Overlay District (ILOD) pursuant to G.L. Chapter 40A, a copy of which is attached as **Exhibit A**, at a Town Meeting to be held May 5, 2012 ("Town Meeting") and to include in the ILOD a parcel of land consisting of approximately 50 acres, more or less, (the "Property") owned by James X. Mullen, further described in **Exhibit B** attached hereto. The adoption of the ILOD and the inclusion of the Property within the ILOD would enable Mullen to apply to the Wenham Planning Board ("SPGA") for a special permit for development of an Independent Living Facility ("ILF") on the Property.

### **AGREEMENT**

Now, therefore, for mutual consideration, the receipt and sufficiency of which are hereby acknowledged, Wenham and Mullen agree that, if, and only if, the ILOD is adopted at the Town Meeting in the form attached hereto as **Exhibit A**, without modification which materially affects Mullen's rights as set forth herein and Mullen applies for and is granted a special permit for not less than 238 dwelling units, on terms and conditions satisfactory to him, and a building permit for an ILF as described in the ILOD, then Mullen and Wenham shall each perform the actions as set forth herein; provided, however, that with respect to the actions described in Section A.1, Mullen shall perform its obligations regardless of the action of such Town Meeting, or the status of any building permit application.

#### **A. ENGAGEMENT OF CONSULTANTS; REIMBURSEMENT FOR COSTS**

**1. Payment of Consultants and Special Legal Counsel during the Rezoning Process.** Within thirty (30) days of the execution of this Agreement, Mullen agrees to replenish the existing escrow account(s) in the office of the Wenham Town Treasurer in an amount sufficient to pay for all documented costs of Wenham's consultants and special legal counsel in the rezoning process up to and including the conclusion of the Town Meeting at which the ILOD is considered.

**2. Payment for Review of Plan.** At the time of the submittal of the application for the special permit required by the ILOD, Mullen shall deposit with the Wenham Town Treasurer the amount of \$10,000 (the "Special Permit Escrow Account") which shall be used pursuant to G.L.c. 44, §53G by the SPGA to engage a traffic engineer, civil engineer, attorney, landscape architect, architect, urban designer, and other reasonably necessary consultants to provide technical assistance during the review of said application at a mutually agreeable scope and price. The Special Permit Escrow Account shall be replenished by Mullen at the request of the SPGA when the balance falls to \$5,000.00. The Planning Board shall make a good faith effort to select those consultants already engaged pursuant to Paragraph A.1, above, to minimize expense.

**3. Payment for Review of Plans and Documents Before and during Construction.** At the time Mullen submits its first application for a building permit with respect to the ILF, Mullen shall deposit with the Wenham Town Treasurer the amount of \$10,000, (the "Construction Escrow Account") which shall be used pursuant to G.L.c. 44, § 53G by Wenham to engage a landscape architect, architect, code consultant, building inspector, civil engineer, wastewater engineer, wetlands specialist, traffic engineer, attorney, fire protection engineer, structural engineer, and/or other reasonably necessary consultants to provide technical assistance and inspections before and during the construction of the ILF at a mutually agreeable scope and price. Such account shall be used to pay for reasonably necessary outside consultant costs and expenses associated with document or plan review and inspections required by the SPGA, Building Commissioner, Board of Selectmen, Road Commissioners, Fire Department, Police Department, Conservation Commission, and Board of Health to review building permit applications and to conduct conformance review during and following the completion of construction in connection with the development of the ILF. The Planning Board shall make a good faith effort to select those consultants already engaged pursuant to Paragraph A.1, above, to minimize expense.

## **B. PROJECT DESIGN**

**1. Aggregate Limits.** Mullen's application for a special permit for an ILF shall propose a Project with the following aggregate limits:

A. not more than 238 independent, for sale dwelling units, not less than 80% of such units containing only two bedrooms, and none more than three bedrooms;

B. Ancillary structures, amenities and services, including without limitation three staff apartments, five hotel rooms for owner/occupant guests only, restaurant for owner/occupants and their guests, swimming pool, health, fitness, and medical services and equipment.

**2. Underground Utilities.** Mullen shall install all utilities serving the ILF underground, including, but not limited to, water, sewer, gas, electric, telephone/teledata, and cable, unless cost

prohibitive due to ledge, wetlands, etc, or already existing aboveground. All new utility installations shall be single meter, unless otherwise prohibited by law.

#### **C. OPEN SPACE AND TRAIL SYSTEM**

**1. Trails.** Prior to the issuance of the 151st certificate of occupancy, Mullen shall design and install a trail or pathway which connects to Grapevine Road, substantially in accordance with the sketch plan attached as **Exhibit C**.

#### **D. SITE SERVICES**

Mullen shall be solely responsible for the maintenance and operation, including but not limited to refuse and trash removal, snow removal, road, emergency access, and sidewalk maintenance, lighting, landscape maintenance and similar aspects of the ILF to be built within the limits of the Property. This provision shall be reiterated in the master deed for the ILF.

#### **E. PUBLIC SAFETY**

**1. Fire Suppression Plans.** Mullen shall prepare and submit detailed fire suppression and detection plans for review by an independent fire protection engineer selected by the Wenham Fire Department, with the cost of this review paid by Mullen via an escrow account with an agreed upon amount to be funded by Mullen as set forth in Section A.2 of this Agreement.

**2. Alarms.** Each building built as part of the ILF shall contain an alarm for smoke or fire detection connected to the Fire District via either a fire alarm signal wire or via wireless technology, as shall be determined by the Fire District.

**3. Construction Phase.** Mullen shall be responsible for site security during construction, by ensuring that locked gates are maintained at the vehicular entrances to the property. Mullen shall pay for public safety details when required during the construction period when site equipment and material deliveries affect public roadways adjacent to the Property.

#### **F. AFFORDABLE HOUSING**

**1. Schedule.** Mullen has indicated an intent to provide the Affordable Dwelling Units required by Section 12.5.10 of the Wenham Zoning By-Laws by providing off-site rental housing equal to 15% of the total number of on-site units provided that 100% of such off-site units shall be counted on the DHCD's Subsidized Housing Inventory. Such indication shall not limit Mullen's rights to develop for sale housing as set forth in Section 12.5.10. In order to secure Mullen's performance in this regard, Mullen shall adhere to the following schedule:

- a. Prior to the formal submittal of an application for a special permit to the Planning Board, Mullen shall identify a mutually acceptable property under it/his

or a related entity's control, and provide proof of such control (e.g., a binding Offer to Purchase or Purchase & Sale Agreement).

b. Prior to the submittal of an application for any building permit, Mullen shall submit proof to the Planning Board and the Building Inspector that an application for a comprehensive permit has been submitted by it or a related entity to the Wenham Zoning Board of Appeals.

c. Prior to the issuance of the 101<sup>st</sup> certificate of occupancy, Mullen or a related entity, shall obtain a comprehensive permit from the Wenham Zoning Board of Appeals. Prior to the issuance of the 101<sup>st</sup> certificate of occupancy, Mullen shall prepare a deed to be held in escrow for one (\$1.00) dollar to the Town for the land on which the Affordable Dwelling Units shall be located, and an agreement to transfer the comprehensive permit. The comprehensive permit shall contain definitive construction-ready civil engineering for proposed stormwater management facilities and the proposed wastewater disposal facility, which shall be designed to treat wastewater for a minimum of eighty (80) bedrooms, each generating 110 gallons per day of flow. The deed and the permit shall be held in escrow by an agent selected by the Town. The escrow agent shall be instructed to convey the deed in escrow to the Town if Mullen does not make adequate progress, at the sole discretion of the Town, toward the construction of the Affordable Dwelling Units.

**2. Renegotiation.** Mullen and the Town acknowledge that the development of the ILF will require financing from multiple lenders, including institutional bank financing and funding from other private sources. In the event that subparagraph c of Paragraph F.1, above, results in Mullen being (a) unable to obtain some or all of the necessary funding to complete the project, or alternatively (b), only able to obtain financing on terms that are not non-recourse, or are otherwise commercially unreasonable, in either case, Mullen shall have the right to renegotiate this paragraph c. with the Town, in good faith, in order to insure that said provision does not result in (a) or (b), above, occurring. In the event Mullen commences such a renegotiation, as a condition thereof, he shall fully disclose to all lenders the pro forma development details of the ILF, the ILOD Bylaw as passed at Town Meeting, and this Development Agreement; provided, however, Mullen shall not be obligated to formally submit loan applications to the funding sources. Mullen shall consent to the Town communicating directly with his lenders, provided he may also participate in these communications, at his option. Mullen's right to renegotiate shall pertain only to the situations described in (a) and/or (b) above, resulting from said subparagraph c, and not to any other aspect of the project financing, or to terms imposed by the lender(s) which are unrelated to said subparagraph c.

**2. Appeal.** In the event a person aggrieved appeals the issuance of Mullen's comprehensive permit, the Board of Selectmen may waive Section F.1.c , above.

## **G. MITIGATION**

**1. Payment.** Prior to the issuance of the 151<sup>st</sup> certificate of occupancy and with regard only to the issuance of all certificates of occupancy thereafter, Mullen shall contribute the sum of Five Thousand (\$5,000.00) Dollars per bedroom to the Town of Wenham, pursuant to G.L. c. 44, s. 53A.

## **H. MISCELLANEOUS PROVISIONS**

**1. Invalidity.** Mullen and Wenham agree that if the Town's adoption of the proposed ILOD is determined to be invalid, illegal, or unconstitutional by the Attorney General of the Commonwealth of Massachusetts or by a court of competent jurisdiction prior to the performing of the actions described herein, then the provisions of this Agreement and each of the agreements and documents referenced herein shall be null and void; provided, however, that the provisions of Section A.1 shall survive any such determination and shall continue to be in full force and effect.

**2. Compliance.** Mullen agrees that during the special permit process it shall submit all necessary evidence, to the satisfaction of the SPGA, to show compliance with the terms of this Agreement.

**3. Intent to Bind Successors, Heirs and Assigns.** The foregoing obligations shall run with the land now owned by Mullen in Wenham, Massachusetts and shall be binding upon and inure to the benefit and burden of Mullen, its heirs, successors, and assigns. This Agreement shall be recorded with the Essex South District Registry of Deeds.

**4. Effect; Amendment.** This Agreement shall not take effect until voted and executed by the Board of Selectmen of the Town of Wenham. Upon such vote, this Agreement shall not be amended in any material respect except by a further majority vote of the Board of Selectmen, and with the express written agreement of Mullen.

**5. Sale to Tax Exempt Entity.** Mullen understands that the Town supports this Agreement, in part, due to the fact that the proposed development of the Property will generate significant revenue benefiting the Town, including without limitation, real property tax revenue. In order to assure the Town of the continuation of such revenue in an amount proportional to the tax revenue anticipated from the Property, in the event the Property is sold to an entity or organization that is exempt from paying local real property taxes after the issuance of the first certificate of occupancy, Mullen, on behalf of its heirs, successors, and assigns, hereby agrees that such exempt organization shall, on the first business day of January, make an annual payment to Wenham of Five Hundred Thousand (\$500,000.00) Dollars, the receipt of which shall be Wenham's sole remedy against Mullen and such exempt organization under this Agreement, at law or in equity. Said sum shall escalate annually based upon the United States Department of Commerce's Implicit Price Deflator for State and Local Governments or an

alternative mutually agreed upon indicator. Such payments shall continue for as long as the Subject Property is owned by entity or organization that is exempt from paying local real property taxes. Upon James X. Mullen's conveyance to such exempt entity or organization, James X. Mullen shall have no further liability with regard to this condition.

**6. Required Notice.** Unless otherwise specified in this Agreement, any notice to be given under this Agreement shall be in writing and signed by the party (or the party's attorney) and shall be deemed to have been given (a) when delivered, if delivered by hand, or (b) two business days after the date mailed, if mailed by registered or certified mail, all charges prepaid, in either event addressed as follows:

In the case of the Town, to:

Town Administrator  
Town Hall  
Wenham, MA 01984

In the case of the Mullen, to:

James X. Mullen  
P.O. Box 2219  
South Hamilton, MA 01982

By such notice, either party (or such party's attorney) may specify a new address, which thereafter shall be used for subsequent notices.

## **7. Default and Notice.**

A. **By Mullen.** If Mullen shall default in the performance of any term, covenant or condition of this Agreement, which default shall continue for more than sixty(60)days after written notice to Mullen (or if such default shall be reasonably expected to take more than sixty(60) days to cure, said longer period of time), Wenham shall have the right to (i) terminate this Agreement; (ii) withhold any approvals issued by Wenham; or (iii) exercise any other remedy available at law or in equity, including commencing an action for specific performance. Wenham agrees that if, within ten (10) days after Mullen's receipt of a notice of a claim of default, Mullen shall give notice to Wenham that Mullen contests the same, then Wenham shall not have the right to exercise any of the foregoing rights in respect thereto until such claim shall have been finally adjudicated in such contest. Mullen agrees to diligently prosecute any such contest and if such adjudication is in favor of Wenham Mullen shall have thirty (30) days (or such longer period of time as shall be reasonable under the circumstances) to effect such cure and in addition thereto, Mullen shall reimburse Wenham its reasonable legal fees and other expenses in defending any such contest.

**B. *By Wenham.*** If Wenham shall default in the performance of any term, covenant or condition of this Agreement, which default shall continue for more than thirty (30) days after written notice to Wenham (or if such default shall be reasonably expected to take more than thirty (30) days to cure, said longer period of time), Mullen shall have the right to (i) terminate this Agreement; or (ii) exercise any other remedy available at law or in equity, including commencing an action for specific performance.

**8. Effective Date of Agreement.** This Agreement shall be effective as of the date it shall be executed by both Mullen and Wenham.

**9. Dispute Resolution.** Prior to the initiation of any court proceeding regarding the terms of this Agreement or performance thereunder, Wenham and Mullen agree that such disputes shall be first subject to mediation and then binding arbitration for a period not longer than ninety (90) days. Each party shall pay its own legal fees and costs.

**10. Applicable Law; Construction.**

A. This Agreement shall be deemed to have been executed within the Commonwealth of Massachusetts, and the rights and obligations of the parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the Commonwealth of Massachusetts.

B. This Agreement is the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions.

Executed under seal as of the date first above written.

**TOWN OF WENHAM**

By: \_\_\_\_\_  
Selectman Molly Martins, Chairman

By: \_\_\_\_\_  
Selectman John Clemenzi

By: \_\_\_\_\_  
Selectman Patrick Wilson

**JAMES X. MULLEN**

\_\_\_\_\_



**COMMONWEALTH OF MASSACHUSETTS**

**Essex, ss.**

On this 5<sup>th</sup> day of May, 2012, before me, the undersigned Notary Public, personally appeared:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

proved to me by satisfactory evidence of identification, which were Massachusetts driver's licenses, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purposes.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Public (printed name)

My commission expires: \_\_\_\_\_

## **SCHEDULE OF EXHIBITS**

**Exhibit A** ILOD

**Exhibit B** Property Description

**Exhibit C** Trail/Pathway Sketch

## EXHIBIT A

### **ARTICLE 17 TO SEE IF THE TOWN WILL VOTE TO AMEND THE ZONING BY-LAWS BY ADDING A NEW SECTION 12.5, ENTITLED INDEPENDENT LIVING OVERLAY DISTRICT, AS FOLLOWS:**

#### **12.5 INDEPENDENT LIVING OVERLAY DISTRICT (ILOD)**

**12.5.1 PURPOSE.** The purpose of the Independent Living Overlay District (ILOD) is to provide a mechanism for the approval of:

1. independent living facilities (ILF) that offer housing and other services to persons over the age of fifty five, subject to the Age Restriction definition in 12.5.2 below;
2. the development of ILF in a manner that conserves environmental features, woodlands, wetlands, open space, areas of scenic beauty, views and vistas as well as encouraging the renovation and rehabilitation of older, existing buildings; and
3. the development of ILF in a manner harmonious with the surrounding land uses while protecting natural resources and open space.

**12.5.2 DEFINITIONS.** Within this Section, the following terms shall have the following meanings:

*Accessory Structures and Uses-* Structures and uses accessory to the ILF may include, but are not limited to, recreational, personal services, hotel rooms, places of assembly, religious, educational, and cultural places, and the like. Such accessory uses and structures shall be designed for the primary use of the residents and staff of the ILF. Such accessory uses may not be designed for or used as a general business by the general public. Such accessory uses shall have no exterior advertising display.

*Affordable Dwelling Unit –* A dwelling unit affordable to persons or families in the area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development (DHCD), earning more than 50% but less than 80% of the median income, adjusted for household size.

*Age Restriction -* The ILF shall be subject to an Age-Restriction as follows: eighty percent (80%) of the occupied units shall be occupied by at least one person who is age fifty-five (55) or older (the "Qualified Occupant"); provided, however, that in the event of the death of the Qualified Occupant(s) of a unit or other involuntary transfer of a unit, a one year exemption shall be allowed to allow for the rental of the unit to another Qualified Occupant(s) (the "Age Restriction") so long as the provisions of the Housing Laws (defined below) are not violated by such occupancy. The Age Restriction is intended to be consistent with, and is set forth in order to comply with the Fair Housing Act, 42 USC section 3607(b), as amended, the regulations

promulgated thereunder, 24 CFR Subtitle B, Ch. 1, section 100.300 et seq. and G.L. c. 151B, section 4 (the "Housing Laws"). This condition shall be incorporated into the deed riders and association organizational documents. This restriction and any proposed deed shall be subject to review and approval by the Planning Board and approved as to form by Town Counsel prior to the issuance of a certificate of occupancy for any dwelling unit.

*Applicant* - The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit hereunder. The Applicant must own, or be the beneficial owner of, all the land included in the proposed site, or have authority from the owner(s) to act for him/her/it/them or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

*Bedroom* - A separate room intended for, or which customarily could be used for, sleeping.

*Dwelling Unit* - A residence, including studio units. Each residence shall contain a living area, bathroom and, except in studio units, one or more bedrooms, and shall contain a kitchen area or combination kitchen/living area.

*Independent Living Complex (ILC)* - A structure or structures with a mix of dwelling units, common areas and accessory uses.

*Independent Living Facility (ILF)* - An Independent Living Complex with or without ancillary buildings, subject to an Age Restriction. .

*Regulations* - The rules and regulations of the Planning Board relative to subdivisions, special permits and site plans.

*Wetlands* - Resource areas subject to the provisions of G.L. c. 131, ss. 40 and 40A, and the Wenham Water Resources By-Law, Chapter 28 of the General By-Laws.

**12.5.3 OVERLAY DISTRICT.** The ILOD shall be construed as an overlay district. Within the ILOD, the requirements of the underlying zoning district(s) shall remain in full force and effect until a special permit for an ILF has been granted, except where the requirements herein are more restrictive or provide for uses or structures not otherwise available in the underlying district; in such cases, the requirements herein shall supersede the underlying zoning regulations.

**12.5.4 USE REGULATIONS.** An ILF may be constructed, subject to the requirements set forth herein, upon the issuance of a special permit by the Planning Board. No other use or structures shall be permitted, except as specifically provided herein:

1. An ILF consisting of any combination of at least (one) Independent Living Complex and ancillary buildings.
2. Accessory structures and uses.

**12.5.5 ADMINISTRATION.** The Planning Board shall serve as the special permit granting authority pursuant to this Section. The Planning Board may waive the submittal of technical information or documents otherwise required hereunder where the Applicant demonstrates that, due to the simplicity of the proposal, such information is not necessary for or applicable to the Planning Board's decision pursuant to this section. An application for a special permit shall be governed by the following rules.

**12.5.6 APPLICATION.** An application for a special permit shall be submitted to the Planning Board on forms furnished by the Planning Board. Each such application shall be accompanied, by a filing fee of \$1,000 and a technical review fee pursuant to G.L. c. 44, s. 53G. The application shall be accompanied by all of the information required for site plan review, as set forth in Sections 13.5.4 and 13.5.5 of the Zoning By-Law.

**12.5.7 STANDARDS.** In order to be eligible for consideration for a special permit pursuant to this Section, the proposed development shall meet all of the following standards:

1. **Parcel Size and Frontage.** Minimum parcel size for an ILF shall be ten (10) acres, with land under water being excluded from this computation. Minimum frontage for an ILF shall be 200 feet.
2. **Buffer.** A buffer area of 50 feet shall be provided at the perimeter of the property where it abuts existing residentially occupied properties, except for driveways necessary for access and egress to and from the site, or for storm water retention facilities. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The Planning Board may waive the buffer requirement (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation; or (ii) where the land abutting the site is held for conservation or recreation purposes; or (iii) the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.
3. **Removal and Replacement of Vegetation.** Within the site, no clear cutting shall be permitted, except incidental to construction of buildings, roads, trails and parking areas, as approved by the Planning Board.
4. **Roadways.** The principal roadway(s) serving the site shall be designed to conform with the standards of the Town where the roadway is or may be ultimately intended for dedication and acceptance by the Town. Private ways shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant.
5. **Parking.** The Applicant shall provide adequate parking to serve all anticipated uses on the property, with information detailing the method of computation of parking spaces.

Such parking may be underground, in a structure, or on the surface. The minimum number of parking spaces provided on the site shall be 1.25 per dwelling unit in an ILF. The Planning Board may require, when parking is less than 1.5 spaces per dwelling unit, that a reserve area be set aside for additional parking if needed. One (1) parking space shall also be provided for every employee during the largest shift. All parking areas shall be screened from view by a landscaped border at least 50 feet in width from adjacent residentially occupied premises located outside the ILF, including public ways.

6. Loading. Screening and landscaping shall be provided to block all views of loading areas (except those specifically designated for emergency vehicles) from the public right-of-way and adjacent properties.

7. Stormwater Management. The stormwater management system shall be designed in accordance with Massachusetts Department of Environmental Protection Stormwater Management Regulations.

8. Utilities. All electric, gas, telephone, and cable lines shall be placed underground, except upon a demonstration of exceptional circumstances such as rock, ledge and wetlands.

9. Sidewalks and Paths. Sidewalks shall be required to connect parking areas and buildings to nearby buildings. Paths for the use of residents shall be attractively designed with proper regard for convenience, separation of vehicular, bicycle and pedestrian traffic, adequate connectivity, completeness of access to the various amenities and facilities on the site and to connect to pathways on adjacent sites or public ways.

10. Emergency Systems. The ILF shall have an integrated emergency call, telephone and other communications system to provide monitoring for its residents. There shall be sufficient site access for public safety vehicles. A plan shall be approved by the Fire Department for the emergency evacuation of the residents with emphasis on ensuring the safety of residents with physical impairments.

11. Lighting. All exterior lighting shall not produce lighting so as to unreasonably interfere with the use and enjoyment of property within the Town. Lighting practices and systems shall reduce light pollution, light trespass and glare in order to preserve and enhance the natural, scenic, and aesthetic qualities of the Town; conserve energy and decrease lighting cost without decreasing night time safety, security, and productivity; and preserve the night sky as a natural resource to enhance nighttime enjoyment of property within the Town.

12. Emergency Access. When the ILF has a single access road with a length greater than 1000 feet, a second means of access adequate for emergency vehicles, as determined by

the Fire Department, and approved by the Planning Board shall be provided,

13. Further Subdivision. After a special permit is issued for an ILF, no further subdivision of land shall be permitted.

14. Density. The aggregate number of dwelling units shall not exceed 5 times the total number of acres in the ILOD.

15. Building Height. An Independent Living Complex shall have a maximum building height of four stories. Ancillary buildings shall have a maximum height of three stories. Underground or partially underground parking and or building service areas shall not be considered a story. In addition, where a building is designed to accommodate variations in grade, each building segment shall be considered separately in determining the maximum number of stories.

**12.5.8 SUSTAINABLE DESIGN.** The Applicant shall present to the Planning Board a matrix indicating the sustainable design components that shall be achievable as part of the Project. The Applicant shall complete all of the items indicated on the matrix. Upon completion of the Project, the Applicant shall provide a report to the Planning Board from its design, engineering and construction team summarizing how the items were accomplished., and such report will replace any requirement that the Applicant obtain a LEED Certification for the Project.

**12.5.9 INCENTIVES FOR CONVERSION OF STRUCTURES.** Applicants are encouraged to propose the appropriate reuse of land and buildings that are no longer needed or suitable for their original use, where such conversion is compatible with the character of the neighborhood. In the event of such conversion to an Independent Living Complex, the number of stories of any additions or extensions shall not exceed the number of stories of the existing structure on the premises.

**12.5.10 AFFORDABLE DWELLING UNITS.**

1. Not less than 10% of the number of dwelling units in the ILF shall be Affordable Dwelling Units provided on-site.
2. In the alternative, the Applicant, or a related entity such as a single purpose limited liability company under the control or direction of the Applicant, may provide off-site homeownership or rental Affordable Dwelling Units equal to 15% of the total number of on-site units.
3. In the alternative, the Applicant, or a related entity such as a single purpose limited liability company under the control or direction of the Applicant, may provide off-site rental housing equal to 15% of the total number of on-site units provided that 100% of

such units shall be counted on the DHCD's Subsidized Housing Inventory.

4. If the Applicant proposes to situate required Affordable Dwelling Units off-site, the Applicant or such related entity shall demonstrate control of such off-site location(s).
5. The Planning Board shall require specific deadlines for the provision of the required off-site units and the land on which such units are located.
6. If the Applicant elects to provide Affordable Dwelling Units both on and off the site, the Planning Board shall establish the total number of such Affordable Dwelling Units in the grant of any special permit.
7. The Affordable Dwelling Units shall meet the standards of the DHCD as to size and location. The Applicant shall cooperate with the Town to ensure that all Affordable Dwelling Units are counted on DHCD's Subsidized Housing Inventory.

**12.5.11 ACTION BY THE PLANNING BOARD.** The Planning Board may grant a special permit for an ILF where it makes the following findings, in addition to those set forth in Section 13.4.3 of this By-law. Except as set forth in Section 12.5.6, above, Section 13.5, governing site plan review, shall not apply in the ILOD.

1. The proposed facility complies with the requirements of this Section; provided, however, the Planning Board may waive a substantive requirement (except the Affordable Dwelling Unit requirement), when the Board determines that the waiver will not result in substantial detriment to the district or the Town.
2. The proposed facility does not cause substantial detriment to the neighborhood after considering the following potential consequences:
  - a. noise, during the construction and operational phases;
  - b. light pollution;
  - d. visual impact caused by the character and scale of the proposed structure(s).

**12.5.12 LAPSE.** Notwithstanding the provisions of Section 13.4.7, a special permit for an ILF shall lapse after 24 months if substantial use or construction as granted under a permit have not commenced without good cause. This time limit excludes the time required to pursue or await the determination of an appeal.

**OR WHAT IT WILL DO IN RELATION THERETO**



## **EXHIBIT B**

### **MULLEN PROPERTY**

PENGUIN HALL  
36 ESSEX STREET  
WENHAM, MA 01984

#### **Parcel 1: Registered Land**

The land with the buildings thereon now known and numbered as 36 Essex Street, Wenham, Essex County, Massachusetts being shown as **Lot 4** on a plan entitled "Subdivision Plan of Land in Wenham" Hayes Engineering, Inc. Surveyors dated August 30, 2001 being shown on Land Court Plan No. 13729C filed with Certificate of Title No. 75955. Reference is made to said plan for a more particular description of **Lot 4**.

For title reference see Certificate of Title No. 57380.

#### **Parcel 2: Recorded Land**

A certain parcel of vacant land shown on a plan entitled, "Plan of Land in Wenham, Mass. prepared for Commercial Union Insurance Company, Scale 1" = 80', June 15, 1979, Essex Survey Service, Inc., 47 Federal Street, Salem, MA" filed with the Essex South District Registry of Deeds as Plan Number 194 of 1979, and according to said land, bounded and described as follows:

NORTHEASTERLY by Grapevine Road in two lines totaling one hundred eighty three and 11/100 (183.11) feet to a point on a stone wall one and 16/100 (1.16) feet Southerly of a drill hole at Appleton Road (now discontinued); thence bounded,

SOUTHEASTERLY by Appleton Road (now discontinued) along the face of a stone wall in several courses totaling eight hundred six and 45/100 (806.45) feet to a drill hole at the intersection of two stone walls; thence bounded

SOUTHWESTERLY along the face of a stone wall three hundred twenty four and 58/100 (324.58) feet to a drill hole; thence further

SOUTHWESTERLY sixty eight and 57/100 (68.57) feet to a point; the last two distances being by other land of the Sisters of Notre Dame; thence bounded

NORTHWESTERLY by other land of the Sisters of Notre Dame in two courses totaling eight hundred ninety and 89/100 (890.89) feet to the point of beginning.

For title reference is made to deed recorded in Book 9161, Page 225.

Parcel 3: Recorded Land

The land in Wenham, Essex County, bounded and described as follows (Reference is also made to a drawing of property at 20 Essex Street, Wenham, MA 01984, formerly a single parcel belonging to John A. Gray, now divided in lots 1 and 2 (the "Drawing") filed with the Essex South Registry of Deeds on September 16, 2002, in Plan Book 362, Plan 18.

Beginning 598.38 feet south of the Essex County Bound located at the corner of Grapevine Road and Essex Street, at a point on the stone wall representing the southernmost end of the eastern (Essex Street) boundary of Lot 1, as shown on the Drawing; thence

WESTERLY (S85 00' 44"W) 356.54 to a point representing the southernmost point of the western boundary of Lot 1 as shown on the Drawing; thence

SOUTHERLY (S27 20' 47"E) Along the abandoned Appleton Road 99.98 feet to a drill hole set; thence

SOUTHEASTERLY (S52 14' 06"E) Along the abandoned Appleton Road 23.63 feet to a drill hole set; thence

EASTERLY (N75 38' 01"E) 116.6 feet to a point in the center of the bed of the Miles River, through a drill hole set 110.6 feet from the point of departure; thence

SOUTHEASTERLY 111.3 feet along the center of the bed of the Miles River to a point where it crosses the property line of Lot 2, as shown on the Drawing; thence

NORTHERLY (N07 15' 13"E) Along Essex Street 300.88 feet to a drill hole set; thence

NORTHERLY (N06 10' 30"E) Along Essex Street 76.38 feet to the beginning.

The total comprising the area shown as Lot 2 in the Drawing and containing 1.779 acres +/-.

For title reference see deed recorded in Book 24548, Page 417.

Parcel 4: Recorded Land

The land in Wenham, Essex County, Massachusetts being shown as **Lot 4U** on a plan entitled "Subdivision Plan of Land in Wenham, Mass.", Scale 1" = 80'; dated August 30, 2001 and recorded in Plan Book 356, Plan 19.

Reference is made to said plan for a more particular description of **Lot 4U**.

EXHIBIT C

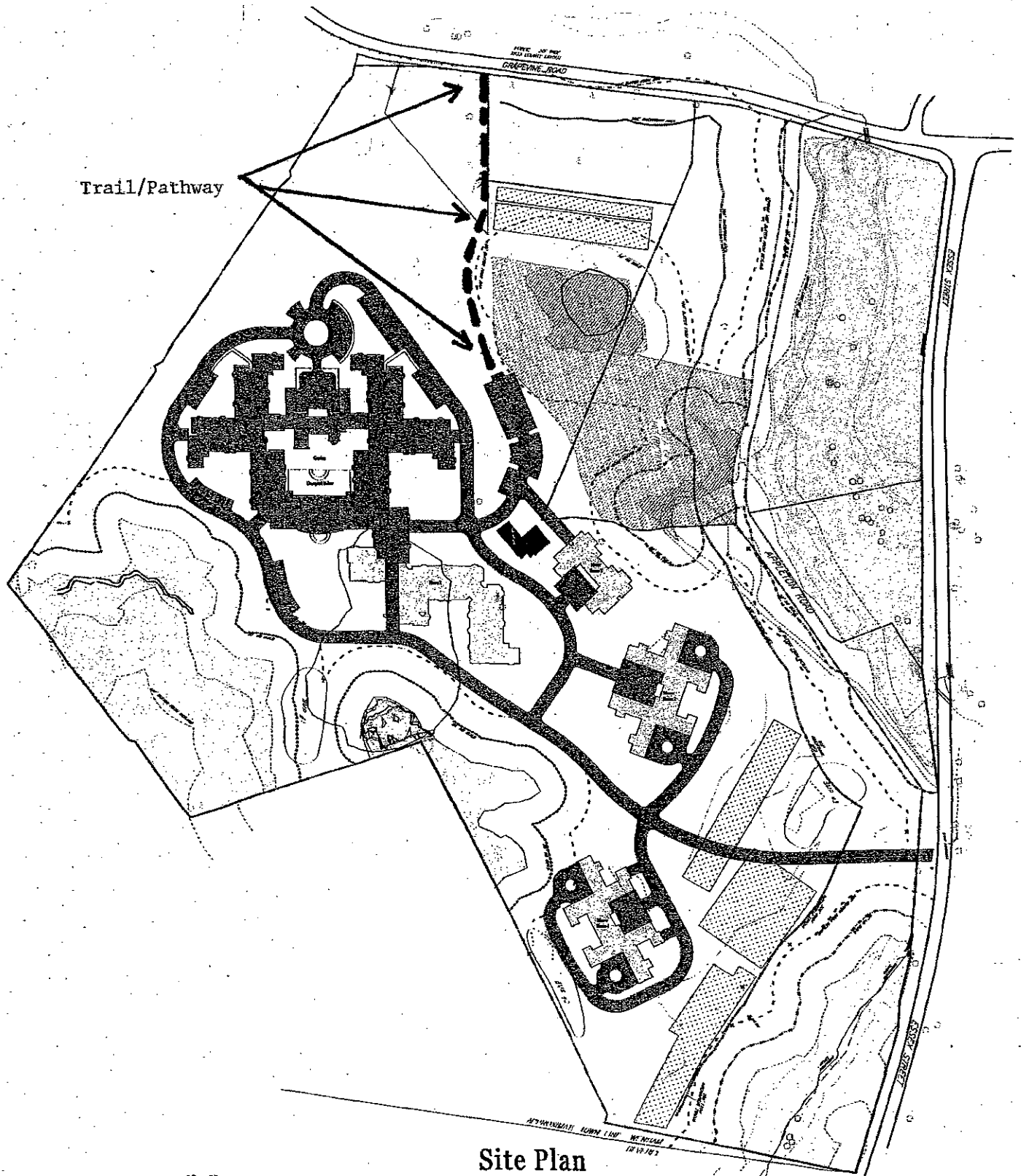


Exhibit "C"

Trail/Pathway Sketch  
Development Agreement  
May 5, 2012